ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996	)	CC Docket No. 96-128
	)	
Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation	)	CC Docket No. 91-35

PETITION FOR RECONSIDERATION AND CLARIFICATION

Mary J. Sisak
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

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SUMMARY

MCI requests reconsideration and/or clarification of the following aspects of the Commission's Order.

1. The Commission must reconsider its market-based approach to compensation because it departs from prior Commission precedent and it is contrary to the public interest. Instead, compensation should be cost-based.

2. The Commission should reconsider its Order prescribing compensation for 800 calls; for BOC-PSPs for 0+ calls where they do not receive compensation once their phones are reclassified; and for international calls.

3. MCI requests that the Commission clarify that for 411 calls, PSPs can require a coin deposit.

4. In order for IXCs to be able to detect and prevent payphone compensation fraud, all non-LEC payphones should be required to transmit the 70 code as part of ANI and all LEC payphones should be required to transmit 27 as part of ANI.

5. The Commission should adopt one definition of payphone, which, at a minimum, should include the requirement that only phones in compliance with the Commission's information digit requirement are entitled to compensation.

6. Compensation for access code and subscriber 800 calls must be cost-based, and not market-based, because there is no market mechanism to set such compensation. As demonstrated in this proceeding, the cost to PSPs of providing access to subscriber 800 and access code calls from their phones is between $0 and $0.083 per call. Accordingly, the Commission should reconsider its Order and prescribe compensation within this range.

7. Facilities-based carriers should not be required to pay the compensation obligation of their resellers.

8. The Commission must require LECs to provide ANI from 950 and non-equal access areas in order for carriers to be able to track calls.

9. PSPs should not be allowed to request compensation up to a year after the compensation period. The Commission must impose a more reasonable time within which PSPs can request back compensation.

10. The Commission must require LECs to pay a proportional share of interim compensation.

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PETITION FOR RECONSIDERATION AND CLARIFICATION

MCI Telecommunications Corporation (MCI) hereby requests that the Commission reconsider and clarify certain aspects of its Order[1] implementing Section 276 of the Communications Act concerning payphone regulation and compensation.

I. INTRODUCTION

In the Order, the Commission concludes that the most appropriate way to ensure fair compensation for payphone service providers (PSPs) is to let the market set the price. However, in recognition of certain regulatory and technical impediments, the Commission establishes a transition to market-set compensation. During the first phase, interexchange carriers (IXCs) are

[1] Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, Report and Order, CC Docket 96-128 and 91-35, FCC 96-388 (released September 20, 1996).

required to pay a proportional share of compensation in the amount of $45.85 per phone per month. The Commission orders per phone compensation during the first year in order to allow carriers to put in place tracking mechanisms. During this phase, states can continue to set the local coin rate at payphones.

During the second phase, carriers that receive calls from payphones are required to track compensable calls from payphones and remit per-call compensation to PSPs. States can no longer regulate the rate for local coin calls, which will instead be set by the market. Carriers must pay compensation to PSPs at the default rate of $.35 per call, unless the parties have agreed to a different compensation amount. PSPs must post the local coin rate at their phones. At the conclusion of this phase, the market-based local coin rate will be the default compensation rate in the absence of an agreement between the PSP and the carrier-payor.

II. MARKET-BASED COMPENSATION IS NOT IN THE PUBLIC INTEREST

The Commission concludes that the Act requires it to implement a policy of payphone compensation that will ensure the wide deployment of payphones. The Commission further concludes that this goal can be achieved, in part, by establishing a market-based compensation amount. In establishing market-based compensation, however, the Commission departs from prior precedent and totally ignores its duty to protect the public interest. Accordingly, the Commission must reconsider its market-based approach to compensation.

The Commission consistently has found that rates should be based on the cost of providing service. Furthermore, in the Interconnection Order,[2] the Commission found that bottleneck inputs must be regulated to make them available at cost. Compensation that carriers must pay when their customers use a payphone is a bottleneck input to the carrier's cost of providing service. Therefore, payphone compensation that is imposed on carriers must be based on cost.

In addition, market-based compensation is not in the public interest. As acknowledged by the Commission, consumers who use payphones can be, and in most cases are, captive ratepayers because there is no available alternative to the particular payphone unit. Thus, consumers oftentimes have no option but to use the payphone, even if the coin rate is unacceptable. In addition, the compensation imposed on carriers most likely will be passed along to consumers in the form of higher rates for telecommunications services. Thus, the Commission's compensation order will lead to higher rates for consumers, contrary to the

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[2] Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, First Report and Order, (Interconnection Order) CC Docket No. 96-98 and 95-185 (released August 8, 1996).

public interest.

III. FAIR COMPENSATION

MCI requests that the Commission reconsider its Order prescribing compensation for subscriber 800 calls. In the Order, the Commission defines "fair compensation" as "where there is a willing seller and a willing buyer at a price agreeable to both."[3] The Commission finds that it must prescribe compensation for all intrastate and interstate access code calls, and subscriber 800 and other toll-free number calls, including debit card calls, because for these calls "the PSP either receives no revenue for originating these calls (i.e., for subscriber 800 and other toll-free number calls), or it is unable to block callers from making such calls (access code calls)."[4]

PSPs, however, can choose to block subscriber 800 calls. In the context of incoming calls to payphones, the Commission does not prescribe compensation because PSPs can block such calls, "if they are concerned about a lack of compensation."[5] The same rationale applies to subscriber 800 calls and, therefore, the Commission should not prescribe compensation.

MCI requests that the Commission reconsider its Order

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[3] Order at ¶ 52.

[4] Id.

[5] Order at ¶ 64.

concerning the payment of compensation to BOC-PSPs for 0+ calls. The Commission concludes that it need not provide compensation for 0+ calls because independent PSPs and non-BOC LECs receive compensation through contracts with the payphone's presubscribed IXC. However, because BOCs were unable to select the presubscribed carriers at their payphones, the Commission finds that once the BOCs reclassify their payphones and terminate all subsidies, they may receive per-call compensation established by this Order, as long as they do not otherwise receive compensation for use of their payphones in originating 0+ calls. The Commission concludes further that, in the absence of a contract providing compensation to the PSP for interLATA 0+ calls, the PSP shall be eligible to collect per-call compensation from the carrier to whom the call is routed.

In the case of BOC payphones, the IXC has a contractual relationship with the location provider for the routing of 0+ calls from the payphones on its premises to the IXC for an established amount of compensation. The Act clearly establishes that the location provider has the right to select the presubscribed carrier for payphones on its premise. The Act further establishes that nothing in the payphone section of the Act "shall affect any existing contracts between location providers and ...interLATA and intraLATA carriers that are in force and effect as of the date of enactment of the

Telecommunications Act of 1996."[6] Thus, by contract, IXCs are entitled to receive 0+ calls from the payphones. The Commission's Order interferes with this relationship to the extent it requires IXCs to make an additional payment to the payphone provider for the same calls.

MCI also requests that the Commission reconsider its Order concerning international calls. As demonstrated by MCI, international calls billed to non-US carrier customers (such as international 800, collect, and foreign-billed credit card calls) is not practicable and it would impose an undue hardship on US carriers because the consumer billed for the call would be the customer of a foreign carrier, not the US carrier. The US carrier would not have the information necessary to bill the consumer and the settlements process would preclude carriers from recovering the cost of compensation through their rates. Therefore, the US carrier would have no mechanism by which to recover its increased cost. The magnitude of this problem is particularly clear in connection with 800 calls that terminate to a foreign country. In some countries the settlement rate is so low that the incremental cost of the PSP compensation would seriously impact the ability of the US carrier to recover its cost for the call.

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[6] 47 USC § 276 (b)(3).

IV. LOCAL COIN CALLS

The Commission finds that the market should determine the rate for local coin calls from payphones. With respect to "411" and other directory assistance calls, the Commission finds that it must ensure fair compensation "by permitting the PSP to charge a market-based rate for this service...".[7]

MCI requests that the Commission clarify that, for "411" calls, PSPs are entitled to require consumers to deposit coins in the phone as with any other local call and that the carrier is not required to compensate the PSP. With respect to other directory assistance calls, the same compensation provisions should apply to these calls as to any other call. Thus, if there is a contractual relationship governing the routing and compensation of directory assistance calls, no additional Commission prescribed compensation should apply. And, if directory assistance is accessed by dialing a carrier access code, the compensation prescribed for such calls should apply.

V. PAYPHONE FRAUD

MCI asks the Commission to reconsider its decision concerning payphone compensation fraud. Although the Commission recognizes that the potential for fraud is significant, it takes no effective action to reduce the risk faced by IXCs. In this

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[7] Order at ¶ 62.

regard, MCI requests that the Commission order all non-LEC payphones to transmit the 70 code as part of ANI and all LEC payphones to transmit the 27 code as part of ANI so that IXCs can at least identify calls from payphones in an effort to detect and prevent fraud.

VI. PAYPHONE DEFINITION

MCI requests that the Commission reconsider its Order concerning the definition of a "payphone." In the Order, the Commission provides two definitions of payphone. First, for purposes of the payment of compensation, the Commission states that a "payphone appearing on the LEC-provided customer-owned, coin-operated telephone lists..." is entitled to compensation and, if a PSP does not subscribe to an identifiable payphone service, or if its payphone is omitted from the list in error, the PSP is entitled to compensation if it "provides alternative verification information" that its phone is a payphone.[8] Although not part of the definition, the Commission states that all payphones "will be required to transmit specific payphone coding digits as a part of their automatic number identification ('ANI'), which will assist in identifying them to compensation payors."[9] Second, the Commission states that "beyond the

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[8] Order at ¶ 66.

[9] Id.

purposes of paying compensation,... a payphone is any telephone made available to the public on a fee-per-call basis, independent of any other commercial transaction, for the purposes of making telephone calls, whether the telephone is coin-operated or is activated either by calling collect or using a calling card."[10]

MCI requests that the Commission adopt one definition of "payphone" for all purposes. At a minimum, only phones that are in compliance with the information digit requirement should be considered payphones entitled to compensation. In the Order, the Commission requires all payphones to transmit specific payphone coding digits as part of their ANI so that carriers can track calls from payphone locations and, therefore, carriers should only be required to pay compensation on those calls. Also, a link between call tracking and the compensation obligation is necessary for carriers to be able to pass compensation charges on to the cost causer, which the Commission states carriers can do.

The Commission's first definition is not sufficient because it does not limit what qualifies as a payphone in any reasonable way. Thus, there are no Commission restrictions on what LECs classify as "payphones" for purposes of compiling the payphone list and there is no reasonable limitation of what an individual can claim is a payphone through verification. The only limitation is that the individual must demonstrate that the phone

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[10] Id.

line was restricted, a requirement that could be met for any phone line. For example, a "07" information digit, by itself, does not demonstrate that a phone is a payphone. Rather, "07" indicates a restricted line and it is routinely applied to non-payphone lines, including hotel room, dormitory room and hospital room lines.

The Commission's second definition of payphone excludes phones in hotel, dormitory and hospital rooms since it states that a payphone is a telephone made available to the public "...independent of any other commercial transaction." Thus, the Commission should clarify that such phones are not payphones entitled to compensation.

VII. COMPENSATION AMOUNT

The Commission finds that the payphone market will become increasingly competitive because there are low entry and exit barriers in this market and, therefore, "the market... is best able to set the appropriate price for payphone calls in the long term."[11] In addition, the Commission concludes that the appropriate per-call compensation amount "ultimately is the amount the particular payphone charges for a local call, because the market will determine the fair compensation rate for those calls," and a rate that is compensatory for local coin calls "is

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11 Order at ¶ 70.

an appropriate compensation amount for other calls as well, because the cost of originating the various types of payphone calls are similar."[12] According to the Commission, "deregulated local coin rates are the best available surrogates for payphone costs and are superior to the cost surrogate data provided by the commenters."[13]

Thus, the Commission concludes that after a transition period during which the Commission can ascertain the status of competition in the payphone marketplace, the per-call compensation amount will be equal to the local coin rate, absent a negotiated agreement between the parties. During the transition, the Commission establishes a default per-call rate of $.35 per call; which is the local coin rate in four of the five states that have deregulated their local calling rates. According to the Commission "the market-based rate in these states is the best evidence of a per-call compensation amount that will fairly compensate PSPs."[14]

The Commission's conclusions concerning competition in the payphone marketplace and the use of the local coin rate as "fair" compensation for access code and subscriber 800 calls is seriously flawed and must be reconsidered. As an initial matter,

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12 Id.

13 Id.

14 Order at ¶ 72.

the record evidence clearly demonstrates that the "competition" in the payphone marketplace is between PSPs to be selected by the location provider to be able to place payphones on the premises. PSPs "compete" for this ability by promising to pay the most commissions to the location provider. Thus, the competition in the payphone marketplace creates an incentive for the PSP to raise rates, including the local coin rate, as much as possible to cover the cost of the commission payments to the location provider. As acknowledged by the Commission, this "competition" for the location can, and in fact does, create a monopoly at the location for a particular PSP, which allows the PSP to charge supra-competitive rates because there is no alternative available to the consumer.[15] Accordingly, the market forces in the payphone marketplace do not lead to "competitive" local coin rates, contrary to the Commission's belief.

The local coin rate also is not a surrogate for the cost of using a payphone because the local coin rate recovers the cost of local telecommunications service in addition to the use of the phone. The PSP incurs no telecommunications service cost for access code and subscriber 800 calls and, therefore, at a minimum, the cost of the local call must be deducted from the local coin rate to determine the fee for the use of the phone. In addition, certain costs incurred solely as a result of coin

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[15] Order at ¶ 15 and 72.

calls, such as coin collection, should be deducted because they would not be incurred with a phone used solely for access code and subscriber 800 calls.

The Commission also must reconsider its decision to use a market-based compensation amount for access code and subscriber 800 calls. As previously discussed, bottleneck inputs must be regulated to make them available at cost.[16] In the case of an access code and 800 subscriber call from a payphone, the Commission-prescribed compensation is a bottleneck input in the cost of the call to the carrier. Accordingly, compensation for these calls must be cost-based.

In addition, as recognized by the Commission, for a market-based compensation amount to be appropriate, the payor must have notice of the payment amount[17] and the ability to avoid the charge if it is unacceptable.[18] In the context of compensation for access code and subscriber 800 calls, carriers will not know that there is a compensation obligation for any particular call and they cannot block calls where the compensation amount is not acceptable because carriers cannot identify calls from payphones on a real-time basis.

The Commission's requirement that calls from payphones have

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16 Interconnection Order.

17 Order at ¶ 16.

18 Order at ¶ 15.

either the "07" or "27" coding digit as part of ANI does not allow carriers to identify calls from payphones on a real-time basis because the code "07" does not identify a payphone. Rather, "07" merely indicates that a line is restricted, and this code can be assigned to virtually any type of line.

Also, in the Commission's Order[19] concerning originating line screening(OLS), in which the Commission requires LECs to provide a specific payphone coding digit, LECs are not required to provide it as part of ANI. Rather, they can provide this information through the line information database (LIDB). Therefore, carriers will be required to incur the additional expense of a LIDB query for every "07" call in order to identify those "07" calls that originate from payphones. Also, it appears that a unique digit will not be available from all LECs anytime soon, as a number of LECs have recently requested a waiver of the requirement.[20]

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19 Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, (OLS Order) CC Docket No. 91-35, FCC 96-131 (April 5, 1996).

20 For example, US West seeks an extension until September 15, 1997 to comply with the Commission's requirement; NYNEX requests that it not be required to provide originating line screening service in its 1AESS and 2BESS offices until they are replaced in 1997 and 1998; GTE requests an extension until April 14, 1997; NECA requests an extension for hundreds of carriers that obtain LIDB services from carriers that cannot meet the January 16, 1997 requirement, without specifically stating when the carriers will be able to comply with the requirement; Southwestern Bell seeks an extension until April 14, 1997; and Pacific Bell and Nevada Bell (Pacific) request an extension until September 15, 1997. In addition, Pacific and Puerto Rico

In addition, there clearly will be no notice to carriers of the compensation amount when it will vary depending on the local coin rate charged. And, since carriers will not know the rate, they clearly will not be able to make decisions as to whether the rate is acceptable.

Thus, compensation for access code and subscriber 800 calls must be cost-based, and not market-based, because there is no market mechanism to set such compensation. As demonstrated in this proceeding, the cost to PSPs of providing access to subscriber 800 and access code calls from their phones is between $0 and $.083 per call. Accordingly, the Commission should reconsider its Order and prescribe compensation within this range.

In any event, the Commission's reliance on the "market-based" local coin rate of $.35 in Iowa, Nebraska, North Dakota and Wyoming is flawed. As an initial matter, these rural states are not representative of the payhone market throughout the country. In addition, it is likely that alternative payphones are not available in such areas and, therefore, the PSP is able to charge "supra-competitive rates."

MCI also requests that the Commission clarify that there is no prescribed compensation amount for inmate payphones. As

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Telephone Company seek a waiver of the requirement until such time as they receive a *bona fide* customer request for service.

demonstrated by MCI, PSPs with inmate payphones can ensure that they receive fair compensation through the contract process used to select the operator service provider and payphone provider for a prison. Accordingly, as with 0+ calls, there is no need for the Commission to prescribe compensation for calls from these phones.

VIII. ENTITIES REQUIRED TO PAY COMPENSATION

The Commission finds that the primary economic beneficiary of a call should pay the compensation and, therefore, the Commission imposes the payphone compensation obligation on carriers. The Commission further finds, however, that "in the interests of administrative efficiency and lower costs,"[21] facilities-based carriers should be required to pay the compensation for the calls received by their reseller customers. According to the Commission, "[b]ecause they do not have their own networks, it would be significantly more burdensome for resellers to track calls from payphones.[22] In addition, the Commission states that it would be difficult to identify the party that is liable for the per-call compensation because services like debit cards are often sold in advance and resold before the caller uses the service. Finally, the Commission

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[21] Order at ¶ 86.

[22] Id.

states that the facilities-based carrier may recover the expense of payphone per-call compensation from their reseller customers.

The Commission's rationale simply does not justify imposing the payphone compensation obligation of one carrier on another carrier. At best, the administrative difficulties cited by the Commission would support a requirement that facilities-based carriers perform call-tracking for their resellers. However, based on the Commission's reasoning concerning call tracking in the Order, even a tracking obligation is not justified. Specifically, in the discussion on call tracking, the Commission acknowledges that carriers do not currently have the ability to track calls from payphones and that it will require new investments for carriers to do so. Therefore, the Commission states that carriers can meet their tracking obligation by contracting with others. There is no reason why resellers cannot avail themselves of this same opportunity if the cost of tracking is too burdensome to perform for themselves.

In addition, the facilities-based carrier cannot always accurately track calls of resellers. For example, a facilities-based carrier that provides 800 service to a reseller usually does not contol the platform to which the 800 calls are routed and, therefore, the facilities-based carrier does not and cannot know when a call is reoriginated by hitting "#". Thus, the Commission's Order creates a competitive advantage for resellers because they will not be charged compensation for reoriginated calls, however, facilities-based carriers will have to pay compensation on such calls.

IX. ABILITY OF CARRIERS TO TRACK CALLS FROM PAYPHONES

The Commission finds that the requisite technology exists for IXCs to track calls from payphones. However, because of difficulties in tracking certain calls, the Commission requires carriers to provide for tracking of all compensable calls from payphones, through any arrangement they choose, within one year from the effective date of the rules. The Commission also agrees with commenters that payphones should be required to generate 07 or 27 coding digits within the ANI for the carrier to track calls. In addition, the Commission states that LECs are required to tariff OLS services that provide a discrete code to identify payphones for non-LEC PSPs and concludes that LECs should be required to provide similar coding digits for their own payphones.

MCI requests that the Commission reconsider its tracking requirements. As recognized in the Notice of Proposed Rulemaking, IXCs cannot track 950 calls. IXCs also cannot track calls from non-equal access areas. Moreover, IXCs will not be able to track these calls within one year because LECs do not provide ANI for such calls. Accordingly, for IXCs to be able to track such calls, the Commission must order LECs to provide this information.

MCI also asks the Commission to reconsider and/or clarify its decision concerning the provision of information digits. With respect to unique payphone information digits, LECs should be required to implement two unique information digits to designate payphones: one code to designate LEC payphones; and one for non-LEC payphones. Industry guidelines for ANI Information Digit Codes show that two unique information digits have been assigned to payphones-- code 70 for private payphones and code 27 for LEC payphones. Accordingly, the Commission should require all payphones to generate the 70 or 27 information digit, as appropriate, as part of ANI.

As discussed herein, the Commission's requirement that non-LEC payphones have the "07" information digit is not sufficient because it applies to lines other than payphone lines. Also, the Commission's requirement in the OLS Order concerning a unique payphone digit is not sufficient because the unique digit does not have to be provided as part of ANI. Rather, it can be provided as part of LIDB, which would require IXCs to perform a LIDB query for every 07 call, at significant expense, to determine whether a call is from a payphone. And, as demonstrated, it appears that this unique digit will not be available any time soon even as part of LIDB.

X. ADMINISTRATION OF PER-CALL COMPENSATION

The Commission finds that PSPs can submit ANIs for the payment of compensation up to one year after the end of the compensation period in question. According to the Commission, "[b]ecause a carrier-payor's administrative expenses are presumably reduced through the payment of compensation on a quarterly, as opposed to monthly, basis, we conclude that the reasonable trade-off is that the carrier remains liable... for compensation claims that are submitted within one year of the end of the compensation period in question."[23]

MCI requests that the Commission reconsider this aspect of the Order. The Commission requires that bills for service must be submitted within a "reasonable" time and, in the context of telecommunications service, three months has been found to be a reasonable time. There is no reason to expand this for PSPs. The Commission's rationale that carriers benefit through the payment of compensation on a quarterly basis does not justify allowing PSPs to submit bills up to a year after the quarter. Presumably, PSPs know the ANIs of their payphones and can easily know after each quarter if payment has not been received for a particular ANI, especially since carriers are required to send back to each PSP a statement indicating the number of toll-free and access code calls that the carrier has received from each of

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[23] Order at ¶ 115.